IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs November 6, 2007

STATE OF TENNESSEE v. MICHAEL V. MORRIS

Direct Appeal from the Criminal Court for Davidson County
No. 2005-B-875 Monte Watkins, Judge

No. M2006-02738-CCA-R3-CD - Filed February 25, 2008

The defendant, Michael V. Morris, was convicted of one count of aggravated robbery, a Class B felony. He was sentenced as a career offender to thirty years in confinement at sixty percent. On appeal, the defendant argues that the evidence was insufficient to sustain a conviction for aggravated robbery, and the statements he made to police while in custody were involuntary and should have been suppressed. Upon review of the record and the parties' briefs, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which THOMAS T. WOODALL and JAMES CURWOOD WITT, JR., JJ., joined.

Trudy L. Bloodworth, Franklin, Tennessee, for the appellant, Michael V. Morris.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth T. Ryan, Assistant Attorney General; Victor S. Johnson III, District Attorney General; and Russell Thomas and T. J. Warner, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. BACKGROUND

William Maxey testified that in August of 2004, he worked at the Mapco Express on Nolensville Road close to the intersection of Bell Road and Harding Road. He stated that he had worked for the company for nine or ten years prior to the robbery on August 17, 2004, and had just returned to work for the company after a prolonged absence. Prior to his return, Mr. Maxey stated that he had worked at several of the Mapco Express locations in Nashville along Nolensville Road. On August 17th, he was working as an assistant manager during the 11 p.m. to 7 a.m. shift. Thirty to forty minutes prior to the robbery, Mr. Maxey saw the defendant out in the store parking lot. At one point, Mr. Maxey opened the store door and asked the defendant if he needed anything. The

defendant stated that he was just checking to see if the store was open. Mr. Maxey informed him that the store was open and returned inside.

Mr. Maxey stated that at the time of the robbery, Mapco had just installed a new multi-camera, rapid-eye surveillance system which permitted the Mapco parent company to check on the operation of the store live via the internet. Several cameras were positioned throughout the store and simultaneously recorded activity within the store from different angles. In addition, Mr. Maxey had access to a panic button located under the counter close to the cash register. Mr. Maxey stated that at any given time, there was no more than fifty or sixty dollars in the cash register. He testified that store employees or managers were required to periodically place any money in excess of what was needed to "run the shift" (generally anything more than fifty dollars) in a drop envelope and put it in the store safe.

Mr. Maxey testified that immediately before the robbery, he had his back turned to the store opening and was cleaning and restocking the coffee area before the morning customers arrived. The store buzzer sounded, and Mr. Maxey turned to see the defendant entering the store. Mr. Maxey testified that when he first turned and saw the defendant, he had his hand under his shirt, and "it looked like a gun." Mr. Maxey testified that the defendant told him that he had a pistol, and that he believed the defendant had a gun under his shirt. Mr. Maxey later stated that the object under the defendant's shirt looked black in color. Mr. Maxey stated that he had been trained to remain calm, not to panic, and to give the robber whatever he or she requested. Mr. Maxey testified, however, that "he was panicked inside." He also worried about the defendant shooting or injuring the first customers who would arrive for morning coffee. Mr. Maxey stated that the defendant threw a clear plastic bag at him and began shouting at him to fill it with cigarettes and money from the cash register. After the robbery, Mr. Maxey immediately locked the front door and called 911.

The prosecution played a portion of the audio-visual recording of the robbery at trial. The following exchange was transcribed from the audio-visual recording inside the store:

[Defendant]: Hello.
Mr. Maxey: (Inaudible).
[Defendant]: Come here for a second. Do you see this pistol?
Mr. Maxey: (Inaudible).
[Defendant]: Put your cigarettes, all your cigarettes, in there. Marlboro's and Newports. Now. (Inaudible). You've got two minutes. You've got two minutes.
Mr. Maxey: Marlboro's?
[Defendant]: Give me the money out of the register.
Mr. Maxey: All right.
[Defendant]: You've got two seconds. Somebody comes up[,] I'm going to shoot. (Inaudible).
Mr. Maxey: (Inaudible).

[Defendant]: All the money. Now the cigarettes. Now[.] Now. Marlboro's and - and Newports. Now. That's enough. F***.
Mr. Maxey: All right.
[Defendant]: Have a nice evening.
Mr. Maxey: All right.

After the surveillance video recording was viewed by the court, individual frames of the video were paused while Mr. Maxey demonstrated to the jury what had occurred and pointed out various items located throughout the store, including the safe, the cash register, and the coffee bar.

Mr. Maxey testified that when he gave the defendant the money from the cash register, he was too close to the defendant to press the panic button without alerting him. Mr. Maxey stated that the defendant took about fifty to sixty dollars in cash, and twelve to fourteen cartons of cigarettes with an approximate value of thirty dollars per carton. The bag the defendant threw at him upon entering the store appeared to be one of the bags normally placed in the outside trash cans. A subsequent search after the robbery revealed that one of these bags was indeed missing.

Mr. Maxey testified that he was shown several photographs immediately after the robbery, but he was unable to identify the defendant from the photographs he was shown. Mr. Maxey met with detectives three months later in December and was shown a different series of photographs. He was able to positively identify the defendant from the photographs he was shown at that time.

On cross-examination, Mr. Maxey testified that he had been robbed once before during his employment with Mapco. In that instance, the individual robbing the store placed a gun to Mr. Maxey's waist and forced him to comply. Mr. Maxey stated that in the present case, he told detectives that the man who robbed him was tall, wore glasses, and was in his thirties. Mr. Maxey admitted that he was not focused on whether the defendant actually had a gun but took the defendant's assertion that he had a gun at face value. Mr. Maxey also admitted that he really could not say whether the defendant actually had a gun under his shirt at the time. Mr. Maxey was unable to recall if he told detectives that the defendant had something black under his shirt. Mr. Maxey admitted that he saw the videotape of the store surveillance after the incident, and several times on the news during the week after the robbery. He stated that he told police about seeing the defendant in the parking lot prior to the robbery. He also said that he believed at the time that the man in the parking lot was the same individual because he saw the defendant and heard his voice.

Jason Rosalia testified that he was a detective with the Metro Nashville Police Department. In the fall of 2004 and winter of 2005, he was assigned to the armed robbery unit and participated in the investigation of the Mapco robbery. Detective Rosalia stated that he conducted a follow-up interview with Mr. Maxey after the robbery and showed him two different photographic arrays of potential suspects. Mr. Maxey was unable to identify any of the individuals in the photographs as the suspect at that time. Detective Rosalia stated that the defendant was not included in the two photographic arrays initially shown to Mr. Maxey. In December, Mr. Maxey met again with detectives and was shown another photographic array of potential suspects. A photograph of the

defendant wearing glasses was included among the photographs shown to Mr. Maxey at this time. Mr. Maxey "immediately" identified the defendant as the individual who had robbed him. Detective Rosalia wrote in quotations that Mr. Maxey made an "immediate ID, number two," on the photographic array underneath the defendant's photograph and had him sign it.

Detective Rosalia testified that he was with Detective Gish during a custodial interrogation of the defendant on December 26, 2004. Detective Gish conducted the interview. The interview was videotaped, and a limited portion of the videotape was played at trial. In the portion played at trial, Detective Gish and Detective Rosalia questioned the defendant about his involvement in the robbery of the Nolensville Road Mapco. Detective Gish read the defendant his *Miranda* rights and asked him if he understood his rights. The defendant indicated his understanding and signed the *Miranda* waiver. Detective Gish questioned the defendant about his education. The defendant stated that he completed high school and finished two years of college at Tennessee State University "before crack got me." The defendant also informed the two detectives that he had a crack cocaine habit and had smoked some crack earlier in the day.

In another portion of the videotaped interview, the defendant stated that he remembered robbing the Mapco on Nolensville/Tusculum Road. He recalled the clerk's general description and remembered that clerk wore glasses. The defendant told the detectives that he got cigarettes and money from the robbery. The defendant did not remember what he told the clerk as he left the store. After Detective Gish asked the defendant if he remembered telling the clerk to "have a nice day," the defendant recalled that he had made the remark sarcastically. The defendant stated that he never used a gun but instead used a bottle concealed under his shirt. Detective Gish informed the defendant that he had stolen four hundred dollars from the Mapco. The defendant told the detective that the amount was incorrect. Detective Gish reviewed his file again and acknowledged that the defendant was indeed right, that he had stolen only about fifty dollars in cash and ten to twelve cartons of cigarettes worth approximately four hundred dollars. The defendant agreed with Detective Gish's revised assessment. The videotaped interview concluded as the defendant stated that he gave the cigarettes away to drug dealers in exchange for crack cocaine. The videotape of the custodial police interview was admitted into evidence.

Detective Rosalia testified that the defendant was calm, cooperative, polite, and articulate during the interview. He stated that the defendant's speech was coherent, and that detectives did not coerce or threaten the defendant. Detective Rosalia stated that the defendant did not give the appearance of a "normal" crack-addicted individual. Detective Rosalia stated that during the eleven years he had worked as a police officer, he had encountered several crack addicts and was familiar with the typical characteristics demonstrated by such a person. Detective Rosalia testified that the defendant did not exhibit any of those characteristics during the interview.

On cross-examination, Detective Rosalia testified that he was not present when the defendant was arrested at his apartment and that he could not personally testify whether the defendant had a crack pipe in his possession at the time of arrest. Detective Rosalia conceded that the defendant told the police detectives on more than one occasion during the interview that he had a crack problem.

Detective Rosalia stated that he conducted an informal interview of Mr. Maxey, but he did not take any notes at that interview because everything Mr. Maxey told him was consistent with the information contained in the initial police report.

After the prosecution rested, the defendant moved to dismiss the case. The defendant argued that prosecutors failed to prove that the defendant used an object or article that would cause Mr. Maxey to reasonably fear that the defendant had a gun. Specifically, the defendant argued that Mr. Maxey testified that he was not looking at what the defendant was doing under his shirt, but simply relied upon what the defendant told him without looking to see if anything was concealed under the defendant's clothing. The trial court denied the defendant's motion to dismiss and held that Mr. Maxey testified that he saw what he believed was a gun. The trial court found that sufficient testimony and other evidence had been presented to submit the question to the jury. After the trial court denied the defendant's motion, the jury deliberated and returned its verdict.

The defendant was convicted of aggravated robbery, a Class B felony, and sentenced to thirty years in prison at sixty percent. The defendant filed a motion for new trial which was denied by the court. The defendant was appointed new counsel and filed this appeal.

II. ANALYSIS

On appeal, the defendant argues that the evidence presented at trial was insufficient to sustain a conviction of aggravated robbery. He also argues that the trial court erred in denying his motion to suppress statements he made to police officers during a videotaped interview.

A. Sufficiency

Upon review, we reiterate the well-established rule that once a jury finds a defendant guilty, his or her presumption of innocence is removed and replaced with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). Therefore, on appeal, the convicted defendant has the burden of demonstrating to the court why the evidence will not support the jury's verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). To meet this burden, the defendant must establish that no "rational trier of fact" could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Evans*, 108 S.W.3d 231, 236 (Tenn. 2003); *see* Tenn. R. App. P. 13(e). In contrast, the jury's verdict, approved by the trial judge, accredits the state's witnesses and resolves all conflicts in favor of the state. *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). The state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn from that evidence. *Carruthers*, 35 S.W.3d at 558. Questions concerning the credibility of the witnesses, conflicts in trial testimony, the weight and value to be given the evidence, and all factual issues raised by the evidence are resolved by the trier of fact and not this court. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). We do not attempt to re-weigh or re-evaluate the evidence. *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006). Likewise, we do not replace the jury's inferences drawn from the circumstantial evidence with our own inferences. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002).

Aggravated robbery is committed by an individual who intentionally or knowingly commits "theft of property from the person of another by violence or putting the person in fear" by using "a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon." Tenn. Code Ann. §§ 39-13-401(a),- 402(a)(1). The defendant asserts that, based upon the evidence, the victim could not have reasonably believed that the defendant possessed a weapon. According to the defendant, the evidence showed only that he demanded money while placing his hand inside his jacket.

This court has previously ruled that it is not necessary to display an actual weapon in order to meet the requirements of the aggravated robbery statute. *See State v. Davenport*, 973 S.W.2d 283, 286 (Tenn. Crim. App.1998) (holding that the evidence was sufficient to support aggravated robbery where the defendant fashioned a rag over his empty hand to lead the store clerk to believe he held a weapon). *See also State v. Monoleto D. Green,* No. M2003-02774-CCA-R3-CD, 2005 WL 1046800 at *9 (Tenn. Crim. App., at Nashville, May 5, 2005). Additionally, this court has issued several opinions specifically addressing the "hand in the pocket" aggravated robbery scenario. The facts of the instant case are nearly identical to the facts of *State v. Melvin L. Harper*, No. E2001-01089-CCA-R3-CD, 2002 WL 31777647 (Tenn. Crim. App., at Knoxville, Dec. 12, 2002), and *State v. Daryl Anthony Jemison*, No. 01CO1-9303-CR-00107, 1994 WL 108944 (Tenn. Crim. App., at Nashville, Mar. 31, 1994), *perm. app. denied* (Tenn., Jul. 1, 1994). In both *Harper* and *Jemison,* the perpetrators concealed their hands inside their jacket as though they possessed a gun. The appellate court in *Harper* addressed the two cases as follows:

> In *Jemison*, the defendant kept his hand in his jacket while threatening "to shoot" the victim. In the present case, Pickens testified that the appellant had an object under his jacket which he pointed at Pickens while ordering her to "open the drawer or I'll kill you." There is only a slight difference in the wording of the threats. While the word "shoot" obviously led the victim in *Jemison* to believe that the defendant had a gun, we have no doubt that the appellant's threat to "kill" Pickens could have led Pickens to believe that the appellant was holding a weapon under his jacket. As in *Jemison*, we conclude in the instant case that "[t]he jury was entitled to accredit the [defendant's] threat and to infer from it and his hand positioning that he was armed."

Harper, 2002 WL 31777647 at *4 (citations omitted). In *Green*, the court summarized the issue this way:

> We note that the common threads . . . on this issue are: 1) a hand concealed in an article of clothing; and 2) a threat-express or implied-that caused the victim to "reasonably believe" the offender had a deadly weapon and was not opposed to using it. We conclude that the Defendant has failed to demonstrate that the evidence is insufficient to support his aggravated robbery convictions.

2005 WL 1046800 at *10. In *Green*, the court also concluded that a victim's fear may be inferred from the facts and circumstances surrounding the robbery, even in the absence of other evidence. *Id*. at *7.

We conclude that sufficient evidence exists in the record to support the defendant's conviction for aggravated robbery. The transcription of the audio-visual recording in the appellate record indicates that the defendant called Mr. Maxey over toward him, asked him if he saw his "pistol," and told him to give him the cigarettes. This is consistent with what Mr. Maxey testified to on direct examination. Mr. Maxey also testified that he saw an object under the defendant's shirt that he believed to be a gun. He stated that he believed that he or his potential early morning customers might be shot. He also stated that he complied with the defendant's orders to avoid being shot. Mr. Maxey also testified that although he did not want the defendant to know it, "he was panicked inside." Sufficient evidence was submitted to the jury to permit them to judge the witness's credibility and make a determination. A reasonable jury could have found that the elements of aggravated robbery were satisfied in this case. Therefore, the defendant is without relief as to this issue.

B. Motion to Suppress

The defendant contends that his statement to police was not given knowingly, intelligently and voluntarily due to his drug use, and that the trial court erred in denying his motion to suppress the statement.

In evaluating the trial court's denial of the defendant's motion to suppress, we first note that a trial court's factual findings in a motion to suppress hearing are conclusive on appeal unless the evidence preponderates against them. *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). Questions about the "credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *Id*. The prevailing party is entitled to the strongest legitimate view of the evidence and all reasonable inferences drawn from that evidence. *State v. Hicks*, 55 S.W.3d 515, 521 (Tenn. 2001). The application of the law to the facts as determined by the trial court is a question of law which we review de novo on appeal. *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997).

In *Miranda v. Arizona*, the United States Supreme Court held that pursuant to the Fifth and Fourteenth Amendments' prohibition against compelled self-incrimination, police officers must advise a defendant of his or her right to remain silent and right to counsel before they may initiate custodial interrogation. 384 U.S. 436, 479 (1966). A waiver of constitutional rights must be made "voluntarily, knowingly, and intelligently." *Id*. at 444. If an individual is accused of criminal activity, there must be an inquiry to ascertain whether any statements or confessions made in the course of a custodial interrogation are voluntary. *See State v. Callahan*, 979 S.W.2d 577, 581 (Tenn. 1998); *see also State v. Fleming*, No. W2003-02547-CCA-R3-CD, 2005 WL 645884 at *5 (Tenn. Crim. App., at Jackson, Mar. 21, 2005), *perm. app. denied* (Tenn. Oct. 10, 2005). However, if an accused is informed of his *Miranda* rights and knowingly and voluntarily waives those rights, he may waive the privilege against self-incrimination. *See Callahan*, 979 S.W.2d at 581. The state has the

burden of proving the waiver by a preponderance of the evidence. *State v. Bush*, 942 S .W.2d 489, 500 (Tenn. 1997). In determining whether a defendant has validly waived his *Miranda* rights, courts must look to the totality of the circumstances. *State v. Middlebrooks*, 840 S.W.2d 317, 326 (Tenn. 1992), *overruled on other grounds* by *State v. Stout*, 46 S.W.3d 689 (Tenn. 2001). A statement given in violation of a defendant's constitutional rights may not be admitted for certain purposes in a criminal trial. *Stansbury v. California*, 511 U.S. 318, 322 (1994).

This court has previously concluded that the fact of a defendant's drug addiction alone is insufficient to render a statement involuntary. The law in this state is well-established that "[t]he ingestion of drugs and alcohol does not in and of itself render any subsequent confession involuntary." *State v. Morris*, 24 S.W.3d 788, 805 (Tenn. 2000) (citing *State v. Robinson*, 622 S.W.2d 62, 67 (Tenn. Crim. App. 1980)). The court in *Morris* stated the defendant's obligation of proof as follows:

> It is only when an accused's faculties are so impaired that the confession cannot be considered the product of a free mind and rational intellect that it should be suppressed . . . The test to be applied in these cases is whether, at the time of the statement, the accused was capable of making a narrative of past events or of stating his own participation in the crime.

Morris, 24 S.W.3d at 805 (citations and quotations omitted). The defendant was able to inform detectives regarding his involvement in the crime. The defendant was able to recall the items stolen, the approximate value of the cash he took from the register, the appearance of the store clerk, and the manner in which he carried out the robbery, in this instance, concealing a water bottle under his shirt in order to make the clerk believe he had a gun.

Our review of the record supports the trial court's findings that the defendant voluntarily waived his *Miranda* rights and gave a knowing and intelligent statement. There was evidence indicating that the defendant was informed of his rights and waived them, and that the waiver was memorialized in writing. In addition, the trial court was able to view a videotaped recording of the custodial police interview and judge the defendant's demeanor during this process. The trial court viewed the videotaped recording and stated:

> Well, I did, obviously, get an opportunity to view a portion of the videotape and observed the demeanor of Mr. Morris and his responses to questions. Mr. Morris appeared coherent, alert, intelligent. On occasion he corrected the officer, as the officer corrected him on occasion.
>
> He was read his Miranda rights. He agreed to it. Signed the right's waiver form. In most respects he appeared to know exactly what was going on at all times. He may have stated at some point he was cloudy or unclear about some things, but that was with respect to past behaviour[,] not what was going on at the moment.

> Taking all those things into consideration, the Court is of the opinion that his statement was, in fact, voluntary and an intelligent statement. So, the court will respectfully deny the motion.

The record does not preponderate against the findings of the trial court. Additionally, the defendant has offered no proof beyond his own assertion that he was "so impaired that [his] confession cannot be considered the product of a free mind and rational intellect." *Morris,* 24 S.W.3d at 805. Therefore, we conclude that the trial court did not err in denying the defendant's motion to suppress. The defendant is without relief as to this issue.

CONCLUSION

Based upon the foregoing authorities and reasoning, we affirm the judgment of the trial court.

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J.C. McLIN, JUDGE